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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,243	04/04/2005	Shuhei Kurata	P1293US	2656
1218 7590 04/11/2007 CASELLA & HESPOS 274 MADISON AVENUE NEW YORK, NY 10016			EXAMINER CRAIG, PAULA L	
			ART UNIT 3761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			04/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/530,243	Applicant(s) KURATA ET AL.	
	Examiner Paula L. Craig	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8 and 12-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 16, 2007 has been entered.

Response to Arguments

2. The objections to Claims 14 and 17 and the rejections of Claims 8 and 15-17 under 35 USC 112, second paragraph, are withdrawn in light of Applicant's amendment filed January 16, 2007. As to the rejections under 35 USC 103, Applicant's arguments with respect to claims 1, 8, and 12-17 have been considered but are moot in view of the new grounds of rejection. Elasticized raised portions of various configurations, differing in the direction in which the elasticized portion is raised, the extent of the raised portion or portions, the layout and attachment of the elastic members, and other features, are common in the art of absorbent articles, as is shown by U.S. Patent Nos. 6,635,041 to Popp et al., 6,179,820 to Fernfors, 5,591,148 to McFall et al., 6,503,233 to Chen et al., 5,824,004 to Osborn, III et al., 5,527,300 to Sauer, 5,188,627 to Igaue et al., 5,447,508 to Numano et al., 5,576,091 to Zajackowski et al., 3,455,303 to Wilson, 3,073,309 to

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Mosier, 5,411,498 to Fahrenkrug et al., 5,947,947 to Tanzer et al., 6,423,043 to Gustafsson, 6,471,682 to Kashiwagi, 6,530,091 to Takai et al., 6,638,262 to Suzuki et al., 6,413,249 to Turi et al., 5,593,400 to O'Leary, 4,935,021 to Huffman et al., 6,168,585 to Cesco-Cancian, 5,129,893 to Thoren, and 4,892,536 to DesMarais et al., and U.S. Patent Application Publication Nos. 2002/0010455 to Hermansson et al. and 2002/0143313 to Tsuji et al.

Claim Objections

3. Claims 22 and 23 are objected to because of the following informalities: In Claims 22 and 23, line 3 of each claim, "embers" should be "members". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 8, and 12-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,635,041 to Popp et al.

6. For Claim 1, Popp teaches a disposable wearing article including an absorbent body having opposite front and rear ends and opposite first and second sides extending between the ends (Figs. 1-9, col. 1, lines 6-14, and col. 6, lines 6-51). A pair of right and left primary elastic members is bonded in their stretched state to at least one cover sheet that is attached to a back portion of the absorbent body (cover sheet is bodyside liner 42 and outer cover 40; primary elastic members are leg elastic members 58 and side panels 34 and 134; Figs. 1-9, col. 6, lines 31-55, col. 7, lines 8-38, col. 8, line 12 to col. 10, line 36, col. 12, lines 12-16 col. 13, line 53 to col. 14, line 35). Popp teaches each of the primary elastic members having an approximately linear portion in an approximately laterally central zone of the back portion inwardly of the opposite first and second sides keeping such a constant distance from the other primary elastic member as to allow a central zone of a skin-side surface of the absorbent body between the right and left primary elastic members to be formed as a raised portion by an action of a contractile force in the approximately linear portion and independent of any forces exerted by a wearer, and each of the primary elastic members further having at least one divergent portion extending from the approximately linear portion towards at least one of the front and rear ends of the absorbent body and outwardly to define at least one divergent pattern (leg elastic members 58 have an approximately linear portion near dotted line 203 and diverge at their ends; side panels 34 and 134 also diverge from the linear portion of leg elastic members 58; Figs. 3-6, col. 6, lines 6-30, col. 13, lines

17-38; Figs. 1 and 2 show the raised portion extending outward between the left and right elastic members; Fig. 3 shows the divergent portions).

7. For Claim 8, Popp teaches a disposable wearing article including a cover sheet and having opposite front and rear ends and opposite first and second sides extending between the ends (cover sheet is bodyside liner 42 and outer cover 40, Figs. 1-9, col. 1, lines 6-14, and col. 6, lines 6-51). An absorbent body is attached on a skin-side surface of the cover sheet (absorbent body is absorbent assembly 44, Fig. 3, col. 6, lines 6-51, col. 12, lines 12-20). A pair of right and left primary elastic members is bonded in their stretched state to the cover sheet (cover sheet is bodyside liner 42 and outer cover 40; primary elastic members are leg elastic members 58 and side panels 34 and 134; Figs. 3-9, col. 6, lines 31-55, col. 7, lines 8-38, col. 8, line 12 to col. 10, line 36, col. 12, lines 12-16, col. 13, line 53 to col. 14, line 35). Popp teaches each of the primary elastic members having an approximately linear portion in an approximately laterally central zone of the back portion inwardly of the opposite first and second sides keeping such a constant distance from the other primary elastic member as to allow a central zone of a skin-side surface of the cover sheet between the right and left primary elastic members to be formed as a raised portion by an action of a contractile force in the approximately linear portion and independent of any forces exerted by a wearer, and each of the primary elastic members further having at least one divergent portion extending from the approximately linear portion towards at least one of the front and rear ends of the cover sheet and outwardly to define at least one divergent pattern (leg elastic members 58 have an approximately linear portion near dotted line 203 and diverge at their ends;

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side panels 34 and 134 also diverge from the linear portion of leg elastic members 58; Figs. 3-6, col. 6, lines 6-30, col. 13, lines 17-38; Figs. 1 and 2 show the raised portion extending outward between the left and right elastic members 58; Fig. 3 shows the divergent portions).

8. For Claims 12 and 15, Popp teaches the at least one divergent portion including a front divergent portion extending from a front end of the linear portion substantially to the front end of the absorbent body or the cover sheet (front divergent portion is side panels 34 and the part of the leg elastic members 58 close to side panels 34, Figs. 3-9, col. 6, line 52 to col. 7, line 8, col. 13, line 53 to col. 14, line 35).

9. For Claims 13 and 16, Popp teaches the at least one divergent portion including a rear divergent portion extending from a rear end of the linear portion substantially to the rear end of the absorbent body or the cover sheet (rear divergent portion is side panels 134 and the part of leg elastic member 58 close to side panels 134, Figs. 3-9, col. 6, line 52 to col. 7, line 8, col. 13, line 53 to col. 14, line 35).

10. For Claims 14 and 17, Popp teaches the at least one divergent portion including front and rear divergent portions extending from opposite front and rear ends of the linear portion towards the respective front and rear ends of the absorbent body or the cover sheet (front divergent portion is side panels 34 and the part of the leg elastic members 58 close to side panels 34; rear divergent portion is side panels 134 and the part of leg elastic member 58 close to side panels 134; Figs. 3-9, col. 6, line 52 to col. 7, line 8, col. 13, line 53 to col. 14, line 35).

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11. For Claim 18, Popp teaches the cover sheet including an outer cover sheet and a skin-side cover sheet (outer cover sheet is outer cover 40, skin-side cover sheet is bodyside liner 42, Figs. 3 and 7-9, col. 6, lines 5-55, col. 10, line 43 to col. 12, line 12).

12. For Claim 19, Popp teaches all of the right and left primary elastic members being between the outer cover sheet and the skin-side cover sheet (Figs. 3 and 7, col. 6, lines 5-55, col. 8, line 32 to col. 11, line 40, col. 13, line 32 to col. 14, line 35).

13. For Claim 20, Popp teaches the cover sheet having an outer surface opposite the skin-side surface, the right and left primary elastic members being bonded in their stretched state to the outer surface of the cover sheet so that substantially all of each of the right and left primary elastic members is attached to the outer surface of the cover sheet (primary elastic members are leg elastic members 58, cover sheet is bodyside liner 42 and outer cover 40, Figs. 3, 8 and 9, col. 11, lines 24-30).

14. For Claim 21, Popp teaches the cover sheet being a skin-side cover sheet (cover sheet is bodyside liner 42 and outer cover 40, Figs. 3 and 7-9, col. 11, lines 24-65).

Popp teaches the disposable wearing article including an outer cover sheet superimposed on the outer surface of the skin-side cover sheet and bonded to the skin-side cover sheet so that essentially all of the right and left primary elastic members are between the skin-side cover sheet and the outer cover sheet (outer cover sheet is outer cover 40, Figs. 3 and 7-9, col. 6, lines 5-55, col. 10, line 43 to col. 12, line 12).

Claim Rejections - 35 USC § 103

15. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popp in view of U.S. Patent No. 4,892,536 to DesMarais et al.

16. For Claims 22 and 23, Popp teaches all the limitations of Claims 8 and 1, as described above in paragraphs 7 and 6. Popp teaches a central zone of a skin-side surface of the cover sheet between the right and left primary elastic members being formed as a raised portion by an action of the contractile force of the primary elastic members independent of forces exerted by the wearer (cover sheet is bodyside liner 42 and outer cover 40, Figs. 1 and 2, col. 6, lines 6-30). Popp also teaches the raised portion being in the divergent portion (Fig. 1; notice that the cover sheet extends outward, beginning at the front and back waist edges 38 and 39). Popp teaches the skin-side surface of the cover sheet including elastomeric materials (col. 12, lines 7-12). Popp does not expressly teach the raised portion in the divergent portion being raised by the action of the contractile force of the primary elastic members. However, it is known in the art for a raised portion to be raised between divergent elastic members by the action of the contractile force of the elastic members. DesMarais confirms this and teaches a disposable wearing article having a central zone of a skin-side surface of a cover sheet between right and left primary elastic members formed as a raised portion by action of the contractile force of the primary elastic members in the divergent portion independent of forces exerted by the wearer (cover sheet is the liner 24, divergent portions of the primary elastic members are the V-shaped elastic strands 28, Figs. 1-3, col. 5, line 10 to col. 6, line 43). DesMarais teaches that this arrangement allows the

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cover sheet to closely adhere to the wearer and creates a void space between the cover sheet and the absorbent body (col. 6, lines 17-24). In light of Popp's teaching that the cover sheet may include elastomeric materials, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Popp to include the raised portion of the skin-side surface of the cover sheet in the divergent portion being raised by the action of the contractile force of the primary elastic members, as taught by DesMarais, to allow the cover sheet to closely adhere to the wearer and create a void space between the cover sheet and the absorbent body, as taught by DesMarais.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

